
SENATE BILL 5867

State of Washington

65th Legislature

2017 Regular Session

By Senator Braun

1 AN ACT Relating to creating a flexible voluntary program to allow
2 family members to provide personal care services to persons with
3 developmental disabilities or long-term care needs under a consumer-
4 directed medicaid service program; amending RCW 74.39A.074,
5 74.39A.076, 74.39A.240, 74.39A.341, and 18.88B.041; adding new
6 sections to chapter 74.39A RCW; and creating a new section.

7 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

8 NEW SECTION. **Sec. 1.** The legislature finds that the most common
9 form of long-term care provided to persons who are elderly, disabled,
10 or have a developmental disability is provided by a family member in
11 a personal residence. The legislature also finds that care provided
12 by a family member who is chosen by the recipient is often the most
13 appropriate form of care, allowing vulnerable individuals to remain
14 independent while maintaining a sense of dignity and choice. The
15 current system of medicaid services has complexities that may create
16 obstacles for consumers who wish to be cared for by a family member
17 and for family members who enter the system solely to provide care
18 for their loved ones.

19 Therefore, the legislature intends to create an optional
20 consumer-directed program for providing personal care services for
21 individuals with long-term care needs or developmental disabilities

1 receiving care from a family member. This program is intended to
2 provide individuals with more flexibility in accessing their benefits
3 and to reduce obstacles for consumers who wish to hire family members
4 to provide their care.

5 NEW SECTION. **Sec. 2.** A new section is added to chapter 74.39A
6 RCW to read as follows:

7 The department is directed to develop and implement a consumer-
8 directed medicaid program as provided in chapter . . ., Laws of 2017
9 (this act). This program is intended to be a voluntary alternative
10 option for individuals with long-term care needs or developmental
11 disabilities who choose to receive personal care services from a
12 family member. The department shall review existing medicaid programs
13 and determine the appropriate waiver to seek from the centers for
14 medicare and medicaid services. The department shall seek stakeholder
15 input on the new consumer-directed program's design to inform its
16 submission of a waiver proposal to the centers for medicare and
17 medicaid services. The department's waiver proposal must be submitted
18 to the centers for medicare and medicaid services by March 1, 2018.
19 By January 1, 2019, and September 1, 2019, the department must submit
20 status reports to the legislature that provide information about the
21 department's activities, program design, necessary statutory changes,
22 barriers to implementation, and estimated implementation date,
23 caseload, and costs. The consumer-directed medicaid program as
24 provided in chapter . . ., Laws of 2017 (this act) must be available
25 to consumers by January 1, 2019.

26 NEW SECTION. **Sec. 3.** A new section is added to chapter 74.39A
27 RCW to read as follows:

28 (1) The consumer-directed medicaid program is a voluntary
29 alternative option for consumers who seek to receive personal care
30 services from a family member. The consumer-directed medicaid program
31 must also reduce barriers that prevent consumers from being able to
32 select a family member as their paid personal care or respite
33 provider. The consumer, or his or her representatives, if applicable,
34 must have decision-making authority to recruit, hire and fire,
35 determine wages, train, supervise, and determine other conditions of
36 employment for his or her family member providing personal care and
37 respite services. The consumer, or his or her representatives, or

1 both, must also have decision-making authority over how the medicaid
2 funds in his or her individual budgets are spent.

3 (2) The consumer-directed medicaid program must include the
4 following characteristics:

5 (a) A consumer-centered planning process that is directed by the
6 consumer with assistance as needed or desired by a representative of
7 the consumer's choosing. The process must include an assessment and
8 service plan that establishes eligibility, the available budget
9 amount, and the preferences, abilities, needs, and desired measurable
10 outcomes of the consumer. The process may include other persons,
11 freely chosen by the consumer, who are able to serve as important
12 contributors to the process. The planning process must include
13 planning for contingencies such as when a needed service is not
14 provided due to the family member being unavailable. As part of the
15 contingency planning process, an assessment of the risks to the
16 consumer must be completed, and a discussion about how risks will be
17 addressed must be held;

18 (b) A service plan that specifies the services and supports that
19 are to be furnished to meet the preferences, choices, abilities, and
20 needs of the consumer, and that assists the consumer to direct those
21 services and supports so he or she is able to remain in his or her
22 community; and

23 (c) An individualized budget that is under the control and
24 direction of either the consumer, or his or her representative, or
25 both. The budget plan is developed using a consumer-centered planning
26 process and is individually tailored in accordance with the
27 consumer's needs and preferences as established in the service plan.
28 The department must describe the method for calculating the dollar
29 values of consumer budgets and define a process for making
30 adjustments to the budget amount when there are significant changes
31 in the consumer's support and service needs.

32 (3) The program must also include a system of supports to provide
33 information and assistance to consumers to address assessed needs
34 including, but not limited to:

35 (a) Information regarding how consumer-directed programs work;

36 (b) Information about a consumer's rights and responsibilities
37 when enrolled in a consumer-directed program;

38 (c) A consumer may provide training directly to his or her family
39 members or determine training topics that must be completed. The
40 content of the training must be related to the consumer's

1 preferences, care needs, conditions, health, safety, or topics
2 relevant to his or her consumer-centered plan and spending plan under
3 the program. The department may assist consumers by offering
4 voluntary training on how to select, manage, train, and dismiss
5 employees. This may include referrals to other agencies, educational
6 institutions, and consumer and community advocacy organizations to
7 obtain information and assistance; and

8 (d) A consumer must determine the compensation, hours, and
9 working conditions of his or her family members. The hourly wage paid
10 must be at least the state minimum wage.

11 (4) The department must contract with an independent third party
12 to provide financial management services to assist consumers in
13 exercising their budget authority unless they are able to perform
14 some or all of these functions themselves. Financial management
15 services may include assistance in understanding billing and
16 documentation responsibilities, performance of payroll and employer-
17 related duties, assistance purchasing approved goods and services,
18 tracking and monitoring goods and services purchased and provided,
19 and identifying expenditures that are over or under the budget.

20 (5) The program must include necessary safeguards to protect the
21 health and welfare of consumers. The program must include a
22 requirement that any family member providing services pass
23 appropriate state and federal criminal background checks to verify
24 that he or she does not have a criminal history that would disqualify
25 him or her from working with vulnerable persons. The family member
26 providing services also must not be listed on any long-term care
27 abuse and neglect registry, child abuse registry, or any other
28 registry or list used by the department to disqualify the person from
29 caring for vulnerable persons.

30 (6) A consumer must be allowed to disenroll from the program at
31 any time and return to a traditional service delivery system.

32 (7) For the purposes of this section and section 2 of this act:

33 (a) "Consumer" means a person who:

34 (i) Is functionally disabled and eligible for personal care or
35 respite care services under medicaid personal care, community first
36 choice option, community options program entry system, chore services
37 program, new freedom system, or respite care program;

38 (ii) Is eligible for respite care or residential service and
39 support as a person with developmental disabilities under Title 71A
40 RCW; or

1 (iii) Is eligible for respite care as defined in RCW 74.13.270.

2 (b) "Family member" means a person who is related by blood,
3 adoption, or marriage as a child, parent, or sibling, including those
4 relations denoted with the prefix "grand" or "great."

5 (8) The department shall adopt rules necessary to implement this
6 section.

7 **Sec. 4.** RCW 74.39A.074 and 2012 c 164 s 401 are each amended to
8 read as follows:

9 (1)(a) Beginning January 7, 2012, except for long-term care
10 workers exempt from certification under RCW 18.88B.041(1) (a) and (f)
11 and, until January 1, 2016, those exempt under RCW 18.88B.041(1)(b),
12 all persons hired as long-term care workers must meet the minimum
13 training requirements in this section within one hundred twenty
14 calendar days after the date of being hired or within one hundred
15 twenty calendar days after March 29, 2012, whichever is later. In
16 computing the time periods in this subsection, the first day is the
17 date of hire or March 29, 2012, whichever is applicable.

18 (b) Except as provided in RCW 74.39A.076, the minimum training
19 requirement is seventy-five hours of entry-level training approved by
20 the department. A long-term care worker must successfully complete
21 five of these seventy-five hours before being eligible to provide
22 care.

23 (c) Training required by (d) of this subsection applies toward
24 the training required under RCW 18.20.270 or 70.128.230 or any
25 statutory or regulatory training requirements for long-term care
26 workers employed by community residential service businesses.

27 (d) The seventy-five hours of entry-level training required shall
28 be as follows:

29 (i) Before a long-term care worker is eligible to provide care,
30 he or she must complete:

31 (A) Two hours of orientation training regarding his or her role
32 as caregiver and the applicable terms of employment; and

33 (B) Three hours of safety training, including basic safety
34 precautions, emergency procedures, and infection control; and

35 (ii) Seventy hours of long-term care basic training, including
36 training related to core competencies and population specific
37 competencies.

1 (2) Only training curriculum approved by the department may be
2 used to fulfill the training requirements specified in this section.
3 The department shall only approve training curriculum that:

4 (a) Has been developed with input from consumer and worker
5 representatives; and

6 (b) Requires comprehensive instruction by qualified instructors
7 on the competencies and training topics in this section.

8 (3) Individual providers under RCW 74.39A.270 shall be
9 compensated for training time required by this section.

10 (4) The department shall adopt rules to implement this section.

11 **Sec. 5.** RCW 74.39A.076 and 2015 c 152 s 2 are each amended to
12 read as follows:

13 (1) Beginning January 7, 2012, except for long-term care workers
14 exempt from certification under RCW 18.88B.041(1) (a) and (f):

15 (a) A biological, step, or adoptive parent who is the individual
16 provider only for his or her developmentally disabled son or daughter
17 must receive twelve hours of training relevant to the needs of adults
18 with developmental disabilities within the first one hundred twenty
19 days after becoming an individual provider or within one hundred
20 twenty calendar days after March 29, 2012, whichever is later.

21 (b) Individual providers identified in (b)(i), (ii), and (iii) of
22 this subsection must complete thirty-five hours of training within
23 the first one hundred twenty days after becoming an individual
24 provider or within one hundred twenty calendar days after March 29,
25 2012, whichever is later. Five of the thirty-five hours must be
26 completed before becoming eligible to provide care. Two of these five
27 hours shall be devoted to an orientation training regarding an
28 individual provider's role as caregiver and the applicable terms of
29 employment, and three hours shall be devoted to safety training,
30 including basic safety precautions, emergency procedures, and
31 infection control. Individual providers subject to this requirement
32 include:

33 (i) An individual provider caring only for his or her biological,
34 step, or adoptive child or parent unless covered by (a) of this
35 subsection;

36 (ii) A person working as an individual provider who provides
37 twenty hours or less of care for one person in any calendar month;
38 and

1 (iii) A person working as an individual provider who only
2 provides respite services and works less than three hundred hours in
3 any calendar year.

4 (2) In computing the time periods in this section, the first day
5 is the date of hire or March 29, 2012, whichever is applicable.

6 (3) Only training curriculum approved by the department may be
7 used to fulfill the training requirements specified in this section.
8 The department shall only approve training curriculum that:

9 (a) Has been developed with input from consumer and worker
10 representatives; and

11 (b) Requires comprehensive instruction by qualified instructors.

12 (4) The department shall adopt rules to implement this section.

13 **Sec. 6.** RCW 74.39A.240 and 2011 1st sp.s. c 21 s 7 are each
14 amended to read as follows:

15 The definitions in this section apply throughout RCW 74.39A.030
16 (~~and~~) 74.39A.095 (~~and~~) 74.39A.220 through 74.39A.300, and
17 41.56.026 unless the context clearly requires otherwise.

18 (1) "Consumer" means a person to whom an individual provider
19 provides any such services.

20 (2) "Department" means the department of social and health
21 services.

22 (3) "Individual provider" means a person, including a personal
23 aide, who has contracted with the department to provide personal care
24 or respite care services to functionally disabled persons under the
25 medicaid personal care, community options program entry system, chore
26 services program, or respite care program, or to provide respite care
27 or residential services and support to persons with developmental
28 disabilities under chapter 71A.12 RCW, or to provide respite care as
29 defined in RCW 74.13.270. "Individual provider" does not include a
30 family member providing personal care and respite services to a
31 consumer under the consumer-directed medicaid program created in
32 sections 2 and 3 of this act.

33 **Sec. 7.** RCW 74.39A.341 and 2015 c 152 s 3 are each amended to
34 read as follows:

35 (1) All long-term care workers shall complete twelve hours of
36 continuing education training in advanced training topics each year.
37 This requirement applies beginning July 1, 2012.

1 (2) Completion of continuing education as required in this
2 section is a prerequisite to maintaining home care aide certification
3 under chapter 18.88B RCW.

4 (3) Unless voluntarily certified as a home care aide under
5 chapter 18.88B RCW, subsection (1) of this section does not apply to:

6 (a) An individual provider caring only for his or her biological,
7 step, or adoptive child;

8 (b) Registered nurses and licensed practical nurses licensed
9 under chapter 18.79 RCW;

10 (c) Before January 1, 2016, a long-term care worker employed by a
11 community residential service business;

12 (d) A person working as an individual provider who provides
13 twenty hours or less of care for one person in any calendar month;
14 (~~(e)~~)

15 (e) A person working as an individual provider who only provides
16 respite services and works less than three hundred hours in any
17 calendar year; or

18 (f) A family member providing personal care and respite services
19 to a consumer under the consumer-directed medicaid program created in
20 sections 2 and 3 of this act.

21 (4) Only training curriculum approved by the department may be
22 used to fulfill the training requirements specified in this section.
23 The department shall only approve training curriculum that:

24 (a) Has been developed with input from consumer and worker
25 representatives; and

26 (b) Requires comprehensive instruction by qualified instructors.

27 (5) Individual providers under RCW 74.39A.270 shall be
28 compensated for training time required by this section.

29 (6) The department of health shall adopt rules to implement
30 subsection (1) of this section.

31 (7) The department shall adopt rules to implement subsection (2)
32 of this section.

33 **Sec. 8.** RCW 18.88B.041 and 2015 c 152 s 1 are each amended to
34 read as follows:

35 (1) The following long-term care workers are not required to
36 become a certified home care aide pursuant to this chapter:

37 (a)(i)(A) Registered nurses, licensed practical nurses, certified
38 nursing assistants or persons who are in an approved training program
39 for certified nursing assistants under chapter 18.88A RCW, medicare-

1 certified home health aides, or other persons who hold a similar
2 health credential, as determined by the secretary, or persons with
3 special education training and an endorsement granted by the
4 superintendent of public instruction, as described in RCW
5 28A.300.010, if the secretary determines that the circumstances do
6 not require certification.

7 (B) A person who was initially hired as a long-term care worker
8 prior to January 7, 2012, and who completes all of his or her
9 training requirements in effect as of the date he or she was hired.

10 (ii) Individuals exempted by (a)(i) of this subsection may obtain
11 certification as a home care aide without fulfilling the training
12 requirements in RCW 74.39A.074(1)(d)(ii) but must successfully
13 complete a certification examination pursuant to RCW 18.88B.031.

14 (b) All long-term care workers employed by community residential
15 service businesses.

16 (c) An individual provider caring only for his or her biological,
17 step, or adoptive child or parent.

18 (d) A person working as an individual provider who provides
19 twenty hours or less of care for one person in any calendar month.

20 (e) A person working as an individual provider who only provides
21 respite services and works less than three hundred hours in any
22 calendar year.

23 (f) A family member providing personal care and respite services
24 to a consumer under the consumer-directed medicaid program created in
25 sections 2 and 3 of this act.

26 (2) A long-term care worker exempted by this section from the
27 training requirements contained in RCW 74.39A.074 may not be
28 prohibited from enrolling in training pursuant to that section.

29 (3) The department shall adopt rules to implement this section.

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